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Supreme Court, U.S.
FILED
AUG 2 8 2007
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No. 06-11429

IN THE SUPREME COURT OF THE UNITED STATES

KEITH LAVON BURGESS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITIONER'S RESPONSE TO THE BRIEF IN OPPOSITION BY THE UNITED STATES

Petitioner:

KEITH LAVON BURGESS, pro se
FCI Estill #93479-071

On the Brief:

MICHAEL R. RAY, Law Clerk
Legal Assistant-Paralegal

NOW BEFORE THE COURT COMES the Petitioner, pro se, KEITH LAVON BURGESS, to file his response in opposition to the brief of the Respondent UNITED STATES OF AMERICA.

The Petitioner is proceeding pro se with the assistance of an inmate Law Clerk. Petitioner would ask that the Court treat this response in accordance with Erickson v. Pardus, (2007) 167 L.Ed.2d 1081, as far as this Court "liberally construe[ing]" this reply to a "less stringent standard than [a] formal pleading[] drafted by [a] lawyer."

The Respondent spends the first four pages of their brief in opposition quoting the (undisputed) factual background of this case since its commencement (undisputed, of course, with the exception of the § 851 enhancement issue).

Respondent's argument fails miserably to convince the Court to not grant the writ of certiorari. If one were to be persuaded by the Respondent's position, then in essence, one would have to believe that the Petitioner was unfortunately sentenced within the District of South Carolina. Had Petitioner been sentenced in the District of Columbia, the § 851 enhancement would not have applied to increase the penalty to a minimum twenty years.

The Respondents contend that the Petitioner failed to request a re-hearing en banc of the Fourth Circuit's decision. One would then wonder, why, did the government not request re-hearing in the West case? Petitioner would have loved to had a re-hearing before the Fourth Circuit, but he was a might bit disadvantaged, due to the fact that not only did his ineffective trial counsel also rep-

the Supreme Court today, seeking to right this injustice, not only for the Petitioner, but for the fair and equal treatment for all of those criminal defendants who come after him. As to the Respondent's contentions regarding the failure of the Petitioner to ask for re-hearing, Petitioner was under the impression, until nearly the eleventh hour that his attorney would be filing this instant petition. It is apparent that counsel was in over his head, so to speak, as the record of this case clearly indicates there was (at least) one issue which had merit, and that same issue warranted a published opinion from the Fourth Circuit, and this instant advancement to the Honorable Court. Petitioner was expecting his attorney to represent him on this Petition, however, counsel withdrew from his representation.

The Respondent concedes that there is in fact a circuit split regarding the issue advanced in the instant Petition. The problem, they claim, is that it quite simply doesn't effect enough defendants to really matter. Try selling this argument to the poor souls like the Petitioner who are today sitting in federal custody with twenty-year mandatory minimums hanging over their heads. The Respondent further contends that the conflict itself is of a "very recent vintage" and further that this Courts review "could benefit from additional consideration of the question by the lower courts." Honestly now, how many more Defendants in the same predicament as this Petitioner must pass through the system, and be sentenced to an improper twenty year term — before enough are effected? The closing argument (on the brief) of the Respondent is, at best, literally laughable.

that had this Petitioner been fortunate enough to pass through the District of Columbia, versus the District of South Carolina, the twenty-year enhanced penalty would not have applied. The Respondent justifies this calamity by stating simply that not enough folks are effected for it to really matter, therefore the Petitioner is simply subject to the fallout, due to his being in (literally) the wrong district, at the wrong time. This argument must fail.

It is not necessary to obtain the input of any other lower courts' on the issue. The conflict is quite ripe for determination. Allowing the uncertainty to continue would constitute a manifest injustice, not only to this Petitioner, but to all those who come after him, to which the same circumstances apply. It is noteworthy that the instant case and West arose in a fairly short period of time. How many more and hanging in the valance? A criminal defendant has a right to know the punishment he faces. That same defendant has a right to be able to intelligently know not only the charges that are made against him, but too, the penalties which he may incur. With the current ambiguity, there is certainly no way for a defendant to intelligently make that determination. One could certainly argue that it would all depend as to what district (or circuit) he was in, and that, in itself should not be the determining factor.

The issue before this Court today is prime for review, and the pro se Petitioner respectfully requests that this tribunal grant the Petition for Writ of Certiorari, and that counsel be appointed to represent the Petitioner on any further proceedings before this Court. The statute is ambigious, and that ambiguity must be resolved utilizing the rule of lenity — in favor of this Petitioner.

WHEREFORE, the pro se Petitioner respectfully requests

whatever other and further relief that this Court may deem appropriate.

Respectfully submitted,

Dated: August 24, 2007

By: Keith L Burgess
KEITH LAVON BURGESS, pro se
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CERTIFICATE OF SERVICE

I, Keith L. Burgess do hereby certify that on this the 28th. day of August, 2007, I did deposit with the Institutional Special Mail, an exact copy of the within-named Response, properly addressed to:

Ms. Elizabeth A. Olson, Esq.
U.S. DEPARTMENT OF JUSTICE
Office of Solicitor General
Washington, DC 20530-0001

By: Keith L Burgess
KEITH L. BURGESS